

Employment

Can I Get a Tip?

Tipping is one culture trait which has become transatlantic. This North American custom is much more present in UK restaurants these days and, in the near future, under plans announced by the government recently, restaurant owners will be prevented from keeping tips from their staff. The new legislation will ensure that tips go to the workers providing the service, essentially barring business owners from taking a percentage of accumulated tips.

The logic behind this is just and reasonable as it ensures that the employee who provided 100% of the service, gets to keep 100% of the tip. The problem with stating that tips should be awarded in this manner is: how do you define who is the worker providing the service? In a restaurant, for example, the person providing the service could be restricted to front-of-house staff only, such as waiters and bartenders. Alternatively, it could also refer to backroom staff including the chefs and pot wash workers or it could even include cleaners. It is difficult to draw the line as to who is the worker providing the service. At present, we cannot give definite insight on this point until we receive more clarity from the government. As news of the potential change has only just been released to the press, possibly to carry favour with the electorate during politically tumultuous times, it may be a while before the precise detail is unveiled.



If you get tips at work, they don't count towards the national minimum wage, but you do have to pay tax on them. As we shift from physical money to card payments making up the majority of transactions, tips are being paid more and more on card. With this in mind, most companies adopt a card payment system which taxes tips whilst simultaneously distributing them amongst staff. The distribution of tips usually includes backroom staff too, not just waiters and bartenders. This had previously been justified as it allowed other staff to get a share of the tips awarded to front-of-house employees. Under the new legislation, is this approach going to continue to be upheld or will front-of-house staff be at liberty to retain everything?

Regardless of how tips are distributed among certain staff, the primary intention of the law appears to be stopping owners from retaining a percentage of tips. But how this will work in practice is also unclear, as the divide between worker and owner is often a grey area in the restaurant trade. An owner will often work in the restaurant in which he or she owns, either as a manager, server or in the kitchen. Therefore, will a "working" owner be entitled to a cut of the tips? Moreover, if you have an owner who works front-of-house, will they be entitled to a share of the tips that would be denied to an owner who works back-of-house? Even after we receive further detail from the government, it appears likely that tips will still be distributed amongst staff. Whether this is restricted to bar staff and waiters, or it includes chefs, cleaners, pot wash workers and "working" owners too will become clearer when further guidance is released to the public.

These changes will be enacted at some point in the near future with the expectation that they will take place at some point in 2019. Therefore, we cannot give any specific date as to when the changes will come in or how restrictive these will be on company policy with regards the distribution of tips. However, this is something which companies should become aware of now as, if it is your normal practice to take a percentage of tips, your ability to do so will likely be hindered in the near future.

If you would like specific advice on future changes to tipping laws, please contact our employment team.

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